

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PEDRO HEREDIA-PRIETO,

Plaintiff,

Hon. Paul L. Maloney

v.

Case No. 1:16-cv-01229-PLM-PJG

UNKNOWN PARTY,

Defendant.

/

REPORT AND RECOMMENDATION

This is a civil rights action brought by a pro se plaintiff under 42 U.S.C. § 1983. Plaintiff filed his complaint on October 14, 2016. (ECF No.1). The Court granted plaintiff's application to proceed in forma pauperis. (ECF No. 3). On November 3, 2016, the Court ordered plaintiff to provide the Court with the name and address of the named defendant no later than January 16, 2017. (ECF No. 4, PageID.40). On November 14, 2016, plaintiff responded to the November 3 order, stating that the Court should allow him to proceed with discovery so that he can learn the identity of the medical practitioner he is seeking to sue. (ECF No.5, PageID.41). Plaintiff also provided the address for the Newaygo County Jail. (*Id.*).

On February 6, 2017, the undersigned judicial officer explained:

Plaintiff misperceives his and the Court's respective roles and responsibilities in this litigation. Plaintiff is responsible for determining the identity of the defendant. The case may not proceed to discovery until after service of the complaint and summons, and after the parties have conferred as required by Federal Rule of Civil Procedure 26(f). *See Fed. R. Civ. P. 26(d).* None of the cases plaintiff cites stand for the proposition that the Court may allow discovery to proceed against an unnamed party.

(Order to Show Cause, ECF No. 6, PageID.44). The undersigned also ordered plaintiff to "show cause in writing, by March 6, 2017, as to why this matter should not be dismissed pursuant to

Federal Rule of Civil Procedure 41(b) and Western District of Michigan Local Civil Rule 41.1 for want of prosecution and failure to comply with the rules and orders of this court.” (*Id.* at PageID.45). The deadline has passed, and plaintiff has filed no response to the show-cause order.

Accordingly, the undersigned recommends that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) and Western District of Michigan Local Civil Rule 41.1 for want of prosecution and failure to comply with the rules and orders of this court.

Timely objections to this Report and Recommendation shall be considered plaintiff’s final opportunity to show cause why this matter should not be dismissed.

Respectfully submitted,

Date: March 13, 2017

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).